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September 15, 2000

BY HAND

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
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Washington, DC 20554

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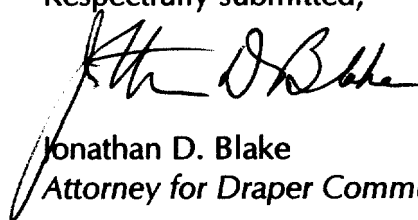
Re: **CS Docket No. 98-120**
Carriage of the Transmissions of the Signals
of Digital Television Broadcast Stations

Dear Ms. Salas:

On August 28, 2000, Thomas Draper of Draper Communications, Inc., licensee of WBOC-TV in Salisbury, MD, mailed the enclosed letter directly to the office of Chairman William Kennard. Please include this letter in the record of CS Docket No. 98-120.

Please direct any questions concerning this matter to the undersigned.

Respectfully submitted,


Jonathan D. Blake
Attorney for Draper Communications, Inc.

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William E. Kennard
Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: CS Docket No. 98-120

Dear Mr. Chairman:

I own a television station in Salisbury Maryland, serving a largely rural population sandwiched between Washington D.C., Baltimore and Philadelphia. Stations like mine are investing a huge proportion of their value into digital television. We are deeply concerned about the Commission's inaction on cable carriage rules for digital television. (In fairness, two Commissioners have recently and publicly urged prompt action on this proceeding.) In recent visits with you and some of the other Commissioners' offices, I and others like me were given three reasons for the Commission's reluctance to take any steps in this proceeding. First, broadcasters are dragging their feet. Second, broadcasters have no business plan for their digital channels. Third, broadcasters should negotiate DTV carriage deals with local systems. This letter shows why delay is unjustified and then demonstrates why DTV carriage rules should be adopted.

I. FURTHER DELAY IS UNJUSTIFIED.

Who is dragging their feet? We broadcasters are moving forward expeditiously with the rollout of digital television despite its very substantial costs. One hundred thirty stations are broadcasting in a DTV mode, covering 65% of the American public. In many cases we expect to be on the air substantially before the required on-air date of May 1, 2002 for stations in markets below the top-30 markets. I certainly do.

What do business plans have to do with it? I and other small-market broadcasters like me simply cannot understand how the Commission believes it may treat broadcasters' programming plans as a prerequisite for Commission action on cable carriage. The 1992 Cable Act, which mandated the DTV cable carriage rulemaking, did not make a particular business plan a prerequisite for the adoption of digital carriage rules. And it is hard to imagine what criteria the Commission could adopt to assess business plans and how it could lawfully link the outcome of this rulemaking to program content. Moreover, wasn't the point of allowing broadcasters the flexibility to provide a range of services, like HDTV, SDTV, and data services, to give the consumer (not the Commission) the opportunity to select what kinds of DTV services succeed?

Moreover, what's the big mystery? By and large, broadcasters have adopted plans that strike an appropriate balance between flexibility and concreteness, given the early stage of DTV set penetration. When I met with your office recently, I explained that my station intended to broadcast in HDTV for certain programming (sports, prime time and programming where the attributes of HDTV

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would particularly enhance the viewers' experience), multicast in other parts of the broadcast day and provide data and, using excess digital capacity, other innovative services. Your office said that it had only heard such descriptions of broadcasters' digital plans from one other smaller-market station owner. I believe that press reports provide examples of other similarly-situated broadcasters. It is certainly my understanding, from conversations I've had with others in my shoes, that for the majority of small-market stations, the mix I described is an accurate description of present service plans. Plans that were more specific than the above description would run the risk of being insufficiently adaptable to new service offerings, including from the networks and other program suppliers, and to changing consumer tastes.

As far as DTV public service is concerned, your office raised the possibility that the Commission should adopt carriage rules only after broadcasters have agreed to heightened public interest requirements for their digital services. I strongly disagree. Broadcasters are not objecting to public interest obligations for their digital operations. They simply take the position that, initially, those public interest obligations should be the same as those that apply to their analog operations. At the same time, we as broadcasters are convinced that the conversion to digital will enhance our service to the public.

The market is not taking care of consumer access problems. In theory, commercial broadcasters can enter into retransmission consent agreements for cable systems voluntarily to carry their DTV signals. But this has not happened. It is not surprising that it has not happened because the Commission has made clear that it has no intention of imposing digital carriage rules. The Commission made the same mistake with respect to compatibility issues when it announced at the outset that it would not impose any regulations, thereby undercutting a major incentive for private-party resolution of those issues. If the cable industry believed that carriage regulations were a possibility, it would be much more motivated to discuss carriage arrangements with broadcasters.

Instead, there are at most a handful of commercial broadcast stations that have digital carriage agreements. Most of the station owners I know have not even been able to bring cable systems to the bargaining table. It is no answer that the networks have entered into digital transmission agreements, though only with a few MSOs. They all offer programming services that have been added to the cable carriage negotiations. As a result, those discussions are by no means purely about carriage, which is the issue Congress directed the FCC to address.

II. CONGRESS MANDATES AND SOUND PUBLIC POLICY REQUIRE ADOPTION OF CABLE CARRIAGE RULES.

In addition to the arguments for delay, one hears various arguments against any digital carriage rules until after the transition. The following responds to some of the more frequently-raised points, specifically to the arguments that digital carriage rules should take effect only at the end of the transition, that they should be adopted later, that the FCC should let the market work in place of a "new" regulatory regime, and that digital carriage rules are not really necessary.

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Digital carriage rules should take effect before the end of the transition. The reasonable and fair reading of the 1992 Cable Act is that Congress was aware that there was a family of rules that govern cable carriage of analog television. Recognizing that this service would be phased out, Congress instructed the Commission to adapt those rules to the new digital environment. It instructed the FCC to launch this proceeding at the time the digital standard was adopted (which was the end of 1997). When the legislation was enacted, the expectation was that the digital transition would require 15 years after that date. It is nonsensical to suggest that Congress went out of its way to specify when the FCC should launch a rulemaking proceeding on carriage rules that would not take effect until the end of that transition. Yet that is the gist of cable's position.

Digital carriage rules should be adopted now, not later. The FCC needs to adopt rules of the road now, even if their implementation occurs in the future. The certainty provided by the FCC's adopting rules now to take effect later will encourage broadcasters to construct stations and roll out services; it will encourage program manufacturers to improve receivers and drive down prices; it will encourage program suppliers to provide content suitable for digital transmission; and it will encourage consumers to purchase digital sets and drive down prices. Cable systems are making decisions now about capacity allocation and set-top box deployment that will affect their willingness and ability to effectively carry DTV in the future. If the Commission waits to adopt digital carriage rules, those cable system decisions may make cable carriage of DTV (whether under must carry or retransmission consent) far less consumer-friendly in the future.

Digital carriage rules do not require a new regulatory scheme, but a transition of the rules from the analog to digital environments. This is not about new rules, but about existing rules needing to be adapted to changed circumstances. Like traffic rules, digital carriage rules are needed to resolve such questions as: Can cable systems degrade broadcaster HDTV programming while carrying HDTV programming that they themselves have an ownership interest? Can cable systems evade television stations' bargained-for contractual rights to exclusivity with networks and syndicators? Can cable systems bury broadcast DTV signals on a graveyard tier? Can cable systems disadvantage broadcast DTV services by putting them on hard-to-reach cable channels in order to promote their own digital programming? There are a very few cable systems at this point and they hold most of the bargaining power in any retransmission consent negotiation. A consumer-friendly and pro-competitive distribution of DTV through cable will not come about if all these basic issues are on the table. Moreover, in talking about the "market", let's remember that the DTV transition is not market-driven. It is a government-mandated and broadcaster-initiated transition that must succeed notwithstanding the very limited consumer demand demonstrated to date.

Capacity increases mean that digital must-carry would not impose heavy burdens on cable. At the outset of the cable carriage debate, cable systems emphasized that viewers' existing cable programming would have to be taken off their systems to accommodate television stations' digital signals. That argument has subsided. The reason is that cable capacity has increased so rapidly that the percentage of capacity that would be consumed by digital and analog carriage today is less than one-third of the percentage of capacity that was consumed by the analog-only carriage requirements back in 1992 and would be less than 10%. If the Commission wants to ensure that disruptions to cable programming are minimal, it should act earlier rather than later.

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There are plenty of good reasons for requiring DTV cable carriage. The first good reason is discrimination. The Commission, Congress and the public have become properly concerned about discrimination by those who exercise bottleneck or monopoly power. The need to protect the American public and its local television service from the threat of discrimination by cable companies with the power and incentive to discriminate in favor of cable programming justifies moving forward on carriage rules.

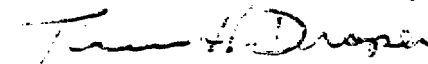
The second good reason is the digital transition. Cable carriage rules are necessary if the benchmarks for the give-back of spectrum are to be achieved. The statute delays the give-back process unless 85% of the American public receive digital signals. Since cable subscription is at the 70% level, cable's refusal to carry digital broadcast signals will inevitably mean that the 85% benchmark will never be approached. This is precisely the conclusion the Congressional Budget Office reached one year ago, and its logic continues to be inescapable.

* * *

Finally, even if you, Mr. Chairman, personally oppose DTV carriage rules, I and other broadcasters in my position urge you to schedule the proceeding for decision at an early Commission meeting. The issue deserves to have its day in court. Congress thought so, and we do, too.

Respectfully submitted,

DRAPER COMMUNICATIONS, INC.



Thomas H. Draper, President

dce

cc. Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Susan Ness
Commissioner Gloria Tristani
The Honorable W.J. Tauzin
The Honorable Joseph R. Biden
The Honorable Erenst F. Hollings
The Honorable John McCain
The Honorable Barbara A. Mukulski
The Honorable William V. Roth, Jr.
CS Docket No. 98-120
Ms. Ellen Goodman
✓ Mr. Jonathan Blake